IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE TWENTY SECOND DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE L.NARASIMHA REDDY

WRIT PETITION NO: 21323 of 2004

Between:

P.Shyam Babu S/o.Rajarao
R/o.Tangellamudi Village, Eluru, West Godavari District.

... PETITIONER

AND

1 The Commissioner of Prohibition and Excise, Government of A.P., Nampally,

Hyderabad.
2 The Deputy Commissioner of Prohibition and Excise, Kakinada, E.G.District.

...RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue writ order or direction more particularly one in the nature of writ of Mandamus, to declare the impugned order of the 1st respondent passed in C.R.No.12322/2003/CPE/D4 Dt.5.8.2004 confirming the order of confiscation passed by the 2nd respondent in his Proceedings Rc.No.B2/2883/02 dt.30.6.2003 as illegal, arbitrary and violative of Principles of natural justice and consequently direct the respondents herein to release the Hero

Honda vehicle bearing No.AP-37-B-4883.

Counsel for the Petitioner: MR.A.JAGANNATHA RAO

Counsel for the Respondents: GP FOR PROHIBITION & EXCISE

The Court, at the admission stage, made the following:

ORDER:

This writ petition is filed assailing the order dated 05-08-2004 passed by the Commissioner of Prohibition and Excise, Government of A.P. – first respondent herein. Through the impugned order, first respondent had confirmed the order dated 30-06-2003 passed by the second respondent confiscating the vehicle as well as certain non-duty paid liquor said to have been seized from the petitioner.

2. The grievance of the petitioner is that on receipt of show cause notice dated 29-11-2002 from the second respondent, he submitted explanation together with an application for release of the vehicle and acting on the same, second respondent passed order dated 07-12-2002 granting interim custody of the vehicle. It is his case that in the teeth of such an order, the observation of the second respondent that there was no explanation from the petitioner does not conform to the record.

3. Heard the learned counsel for petitioner and the learned Government Pleader for Prohibition and Excise.

4. Through the impugned order, the first respondent confirmed the order passed by the second respondent confiscating the vehicle and certain quantity of liquor. Proceedings before the second respondent were initiated under Section 46 of the A.P. Excise Act, 1966 (for short 'the Act'). Whenever an authority

proposes to confiscate the property, it is under obligation to issue notice to the affected party. The petitioner specifically pleaded that he was not issued any notice of hearing and the explanation submitted by him was not considered at all. The first respondent dealt with the contention by observing that proceedings before the second respondent are governed by the provisions of the Code of Civil Procedure and the petitioner did not make any request and in the absence of any request from the petitioner to the second respondent, there is no obligation on the part of the second respondent to issue notice of hearing. The view expressed by the first respondent as stated above is clearly contrary to the settled principles of law. It is the basic and primary duty of an authority vested with the power of confiscating any property, to issue notice to the affected party and it is not for the latter to request the concerned authority to give him an opportunity.

5. A perusal of the order dated 30-06-2003 passed by the second respondent does not disclose that any opportunity was given by him to the petitioner. Further an observation was made to the effect that no explanation was submitted by the petitioner even after receiving the show cause notice on 29-11-2002. Learned counsel for the petitioner placed before this Court, copy of the order dated
07-12-2002 granting interim custody of the vehicle to the petitioner. This discloses that petitioner pleaded certain facts in his favour, which in turn appealed to the second respondent to grant interim custody of the vehicle. That being the case there was absolutely no justification for the second respondent to have passed the order without giving an opportunity to the petitioner or considering the explanation so offered by him while seeking interim custody of the vehicle. Appellate authority did not consider the matter from the proper perspective. Hence the writ petition is allowed and the orders passed by the respondents are set aside. The matter is remanded to the second respondent for fresh consideration and disposal after issuing notice of being heard to the petitioner.

Interim custody of the vehicle in question shall be with the petitioner till the disposal of the said proceedings and the same shall be subject to the orders

that may be passed by the second respondent.

L. NARASIMHA REDDY, J

November 22, 2004

MRR

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To:

1 The Commissioner of Prohibition and Excise, Government of A.P., Nampally,

Hyderabad.
2 The Deputy Commissioner of Prohibition and Excise, Kakinada, E.G.District.

3 Two C.C. s to the G.P. for Prohibition and Excise, High Court Buildings,

Hyderabad (OUT)

4 Two C.D. Copies.